

**STATE OF MICHIGAN**  
**DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**  
**Before the Director of the Department of Insurance and Financial Services**

**In the matter of:**

**MI Rehab Solutions LLC**  
**Petitioner**

**File No. 21-1871**

**v**

**Auto Club Insurance Association**  
**Respondent**

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**Issued and entered**  
**this 11<sup>th</sup> day of February 2022**  
**by Sarah Wohlford**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On December 20, 2021, MI Rehab Solutions LLC (Petitioner) filed with the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request for an appeal concerns the determination of Auto Club Insurance Association that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the denial of a bill pursuant to R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. The Respondent issued the Petitioner a bill denial on September 22, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the dates of service at issue.

The Department accepted the request for an appeal on January 6, 2022. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on January 6, 2022 and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on January 11, 2022.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation to the Department on January 18, 2022.

## II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for physical and aquatic therapy treatments rendered on August 3, 5, and 6, 2021. The Current Procedural Terminology (CPT) codes at issue include 97112, 97113, and 99082, which are described as therapeutic procedure/neuromuscular reeducation, aquatic therapy, and unusual travel in relation to the treatments at issue.

In its *Explanation of Benefits* (EOB) letter, the Respondent referenced American College of Occupational and Environmental Medicine (ACOEM) guidelines for traumatic brain injury (TBI) and explained that “a trial of aquatic therapy is recommended for the treatment of subacute or chronic TBI in select patients” and that evidence of functional improvement should be demonstrated within the first two weeks to justify additional visits. The Respondent further stated in its EOB that, according to the guidelines, an aquatic therapy program “should include up to 4 weeks of aquatic therapy with progression towards a land-based, self-directed physical activity or self-directed aquatic therapy program by 6 weeks” and that treatment beyond 6 weeks “should be limited to severe TBI patient injuries who are still demonstrating objective improvements at 6 weeks that cannot be achieved with land-based activities.” The Respondent stated that the submitted clinical notes lacked objective findings in support of functional improvement.

With its appeal request, the Petitioner submitted medical documentation which identified the injured person’s diagnosis as a traumatic brain injury (TBI) in relation to a motor vehicle accident (MVA) in February of 1988. The Petitioner stated that the injured person participated in a total of 6 aquatic therapy sessions beginning May 20, 2021, “not 36 aquatic therapy sessions” as noted in the Respondent’s denial.

The Petitioner’s request for an appeal stated:

[S]killed [physical therapy (PT)] is necessary to maintain, prevent and slow further deterioration of [the injured person’s] functional status and the services cannot be safely carried out by [the injured person] personally or with the assistance of a non-therapist, including non-skilled caregivers...While not meeting ACOEM and [Official Disability Guidelines] guidelines for diagnosis, services provided were reasonably necessary and medically appropriate...Based on demonstrated progress [the] PT recommended continued aquatic therapy to improve standing tolerance, balance, and core stability to improve functional mobility to address treatment interventions/skill development in ways that cannot be addressed in land-based therapy for [the injured person] who has a severe TBI.

In its reply, the Respondent reaffirmed its position and referenced ACOEM guidelines for TBI disorder as well as Official Disability Guidelines (ODG). The Respondent stated in its reply:

The medical records submitted indicate previous physical therapy from another provider with ongoing functional issues despite having land based physical therapy ongoing since November of 2020 and 5-6 aquatic therapy sessions since May 2021. Opportunity has been given to establish a home activity program.

### III. ANALYSIS

#### Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment and overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, medical necessity was not supported on the dates of service at issue and the treatment was overutilized in frequency or duration based on medically accepted standards.

The IRO reviewer is an actively practicing physical therapist with knowledge of the care of individuals involved in an MVA with chronic severe or moderately severe TBI and who receive physical and aquatic therapy treatment. In its report, the IRO reviewer referenced R 500.61(i), which defines "medically accepted standards" as the most appropriate practice guidelines for the treatment provided. These may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, board, and associations. The IRO reviewer relied on American Physical Therapy Association (APTA) guidelines and medical literature for its recommendation.

The IRO reviewer explained that APTA guidelines state that "aquatic therapy treatment is appropriate at the onset of injury or functional decline, and the patient is able to perform other land-based activities." The IRO reviewer stated that "aquatic therapy was not an appropriate intervention in [the injured person's] clinical scenario and, further, that the treatment was "not evidence based as it related to his clinical condition." More specifically, the IRO reviewer stated:

[The injured person] has a chronic condition and does not have any recent injuries or onset of functional decline that would necessitate this number of visits. ... a patient can receive therapy for maintenance of their functional mobility and to prevent an increased burden of care and risk for disability. However, therapy should be brief and intermittent to re-establish a home exercise program. [The injured person] has had chronic issues related to his initial injury; however, the aquatic care was unnecessary and over utilized.

The IRO reviewer further noted that the injured person had "no new injury or onset to justify aquatic therapy." The IRO reviewer explained that "aquatic therapy is a treatment protocol used for recent onset injuries where the patient cannot tolerate weight bearing or land-based activities." The IRO reviewer further stated:

As per APTA guidelines, [the injured person] had aquatic therapy that was unnecessary during the outpatient treatment program. Additionally, [the injured

person's] treatment visits were excessive in nature and over utilized. [The injured person] did not have a home exercise program that was established to help him maintain functional mobility.

The IRO reviewer recommended that the Director uphold the Respondent's determination that the physical/aquatic therapy treatments provided to the injured person on August 3, 5, and 6, 2021 were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

#### IV. ORDER

The Director upholds the Respondent's determination dated September 22, 2021.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox  
Director  
For the Director:

X *Sarah Wohlford*

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Sarah Wohlford  
Special Deputy Director  
Signed by: Sarah Wohlford